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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

14 INTEL CORPORATION and APPLE INC.,

15 Plaintiffs,

16 v.

17 FORTRESS INVESTMENT GROUP LLC,
18 FORTRESS CREDIT CO. LLC, UNILOC
2017 LLC, UNILOC USA, INC., UNILOC
19 LUXEMBOURG S.A.R.L., VLSI
TECHNOLOGY LLC, INVT SPE LLC,
20 INVENTERGY GLOBAL, INC., IXI IP, LLC,
and SEVEN NETWORKS, LLC,

21 Defendants.
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Case No. 3:19-cv-07651-EMC

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE BRIEF OF
AMICI CURIAE FAIR STANDARDS
ALLIANCE IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS AND STRIKE PLAINTIFFS'
AMENDED COMPLAINT**

Hon. Edward M. Chen

Date: December 17, 2020

Time: 1:30 p.m.

Dept.: Courtroom 5

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Fair Standards Alliance a.s.b.l. (“FSA”) hereby moves the Court for leave to file a brief as *amici curiae* supporting Plaintiffs’ opposition to Defendants’ motion to dismiss and strike Plaintiffs’ amended complaint. *See* Defendants’ Joint Motion to Dismiss and to Strike Plaintiffs’ Amended Complaint, ECF No. 203. The proposed *amicus* brief is attached to this motion as Attachment 1.¹ A proposed order granting this motion is attached as Attachment 2. Counsel for FSA has consulted with counsel for the parties as to whether they consent to FSA’s motion for leave to file a brief as *amici curiae* in the above-captioned matter. Plaintiffs’ counsel consent. Defendants’ counsel requested to review an advanced copy of this brief, which we did not agree to provide. Defendants’ counsel do not consent to the filing of this brief. Accordingly, FSA respectfully asks this Court to grant it leave to file the attached brief as *amici curiae*.

MEMORANDUM OF POINTS AND AUTHORITIES

FSA is a non-profit association of companies dedicated to promoting a transparent and sustainable standard essential patent (“SEP”) licensing framework. FSA’s members are innovators of all sizes—from small and medium-sized enterprises to multinational corporations—who hold patents, including SEPs, in a variety of industries, including telecommunications, semiconductors, consumer electronics, and automotive. Worldwide, FSA members employ more than three million people.

SEPs cover crucial components in many of FSA’s members’ useful and inventive products. FSA aims to ensure that SEPs are licensed on fair, reasonable, and non-discriminatory (“FRAND”) terms, and that SEP royalties reflect the value of the underlying inventions, and not the exclusivity associated with inclusion in a technology standard or aggregation with other intellectual property. Because FRAND terms generally guarantee licenses to all comers, FSA

¹ *Amici* and their counsel represent that they have authored the proposed brief accompanying this motion. No counsel for a party authored the proposed brief in whole or in part, and no person or entity, other than *amici* and their counsel, made monetary contribution to the preparation or submission of the proposed brief.

believes that SEP infringement litigation should be avoided except as a last resort. FSA discourages improper uses of SEP exclusivity, including demands for supracompetitive royalties and repetitive, seriatim infringement litigation to force compliance with those demands. FSA also believes SEP holders should be transparent in identifying their putative SEPs to potential licensees.

“District courts have inherent authority to appoint or deny *amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure.” *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) (quoting *Smith v. Chrysler Fin. Co., LLC*, No. 00-cv-6003 (DMC), 2003 WL 328719, at *8 (D.N.J. Jan. 15, 2003)). In the Northern District of California, “[d]istrict courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has ‘unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *Sonoma Falls Developers, LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (citing *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)).

Standard setting is critical to promoting the dissemination of technology and maintaining a competitive landscape for technology product innovators. See A. Douglas Melamed & Carl Shapiro, *How Antitrust Law Can Make FRAND Commitments More Effective*, 127 Yale L.J. 2110, 2111 (2018) (“[M]any of the benefits generated by the recent and dramatic advances in information technology would have been difficult or impossible to achieve without compatibility standards.”). In order to ensure that standard setting can achieve its intended benefits, operators must be allowed obtain SEP licenses on FRAND terms. Curbing abuses of FRAND commitments is one of *amici*’s primary concerns. Where these abuses occur, or where the possibility for them to occur is tolerated, the ability of standards to contribute to innovation and economic growth at large is at risk.

As an organization dedicated to promoting FRAND licensing for SEPs, proposed *amici* are uniquely positioned to assist the Court in understanding how defendants’ alleged conduct may undermine the essential goals of standard setting and FRAND commitments and the resulting impact on competition in the market for standardized technologies. Because *amici* are deeply

involved in standard setting and understand the need for strong protections surrounding SEP licensing, *amici* respectfully request that the Court grant their Motion for Leave to File the attached brief as *amici curiae*.

Dated: October 27, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2020, I caused the foregoing document entitled Notice of Motion and Motion for Leave to File Brief of *Amici Curiae* Fair Standards Alliance in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss and to Strike Plaintiffs' Amended Complaint to be filed via the court's CM/ECF system, which shall send notice to the counsel of record for the parties.

Dated: October 27, 2020

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